

007-5618 PJH  
5-29-08

From: Kevin BURTON #c-38062

P.O. Box 779007

R.J. DONOVAN STATE PRISON

SAN Diego, CA 92179

**FILED**

JUN 03 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**E-filing**

To: Clerk of The Court U.S. Northern District of California

RE: ① Previously submitted: Complaint under civil Rights Act  
42 U.S.C. 1983 CIVIL NO 07-1803 W(RBB) AND 07-1870 W(RBB) (Facsimile)

② Previously submitted: Request for Appointment of Counsel  
Under the civil Rights Act of 1964, 42 U.S.C. 2000e 5  
(f) (1), DECLARATION IN support of Request

③ Previously submitted: Motion AND Declaration under  
PENALTY of Perjury IN support of Motion to proceed IN  
Forma Pruperis.

Dear, Clerk of the Court, I Previously submitted the above  
mentioned Applications, IN Error TO the Southern District  
Court of California. I received order, transferring  
Above-entitled action to the northern District of  
California Pursuant to 28 U.S.C. sec 84(a), 28 U.S.C.  
Sec 1391(b) and 28 U.S.C. sec 1406(a).

The Latter (Above mentioned Applications 2 and 3),  
were returned to me from the post office for  
Improper Postage (overweight). ON September 20, 2007.

5-29-2008

After Approximately two weeks, from September 20, 2007. I resubmitted IN Error to the Southern District the following: An additional (2) copies of Original Complaint under civil Rights Act of 42 U.S.C.

Also: The original and (2) copies of Motion to proceed In forma Pauperis.

And: The original and (2) copies for Request for Appointment of Counsel, Declaration IN Support of Request.

I Apologize for the error, and the facsimiles of copies of the above submitted applications.

I ask that you please do not Bar my Attempt to protect my Constitutional rights to the federal courts, because of my Inadvertent Ignorance.

Can you please Inform me if I Have to submit any additional documents, or If this matter can be corrected.

Attached Is (2) separate order Transferring civil action to the Northern District. Please note Different civil Case number. THATS THE Error mentioned IN this Letter. THANK you FOR your assistance Sincerely/Karin Burton

6 of 8

FILED

07 OCT 24 AM 11:15

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: (P)

DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

KEVIN BURTON,  
CDCR # C-38062,

Plaintiff,

vs.

CALIFORNIA DEP'T OF CORRECTIONS  
AND REHABILITATION, et al.

Defendants.

Civil No. 07-1870 W (RBB)

**ORDER TRANSFERRING CIVIL  
ACTION FOR LACK OF PROPER  
VENUE TO THE NORTHERN  
DISTRICT OF CALIFORNIA  
PURSUANT TO 28 U.S.C. § 84(a),  
28 U.S.C. § 1391(b) AND  
28 U.S.C. § 1406(a)**

Kevin Burton ("Plaintiff"), currently detained at the San Diego County Jail in San Diego, California, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff claims that various California Department of Corrections and Rehabilitation ("CDCR") and Salinas Valley State Prison officials exposed him to cruel and unusual conditions of administrative confinement during January of 2005 in violation of the Eighth Amendment. (Compl. ¶¶ 26-50, 72-105.) Plaintiff also alleges pendent state law tort claims for intentional infliction of emotional distress, negligent infliction of emotional distress, and negligent training and supervision. (*Id.* ¶¶ 51-67.)

Plaintiff has not prepaid the \$350 civil filing fee mandated by 28 U.S.C. § 1914(a); instead has he filed a Motion to Proceed *In Forma Pauperis* pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2]. Plaintiff has also filed a Motion for Appointment of Counsel [Doc. No. 3].



7 of 8

I.

LACK OF PROPER VENUE

Upon initial review of the Complaint, the Court finds that Plaintiff's case lacks proper venue. Venue may be raised by a court sua sponte where the defendant has not yet filed a responsive pleading and the time for doing so has not run. *Costlow v. Weeks*, 790 F.2d 1486, 1488 (9th Cir. 1986). "A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought." 28 U.S.C. § 1391(b); *Costlow*, 790 F.2d at 1488; *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 842 (9th Cir. 1986). "The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interests of justice, transfer such case to any district in or division in which it could have been brought." 28 U.S.C. § 1406(a).

Here, while Plaintiff is currently detained in San Diego, his constitutional claims arise out of events which are alleged to have occurred at SVSP in Soledad, California, which is located in Monterey County. (See Compl. at 1, ¶¶ 2-23.) Moreover, all Defendants are alleged to work at SVSP and/or reside in Monterey County; none is alleged to reside in the Southern District, which is comprised only of San Diego or Imperial Counties. (*Id.*) See also 28 U.S.C. § 84(a) ("The Northern District [of California] comprises the count[y] of ... Monterey...."); 28 U.S.C. 84(d) ("The Southern District [of California] comprises the counties of Imperial and San Diego.").

Therefore, venue is proper in the Northern District of California pursuant to 28 U.S.C. § 84(a), but not in the Southern District of California. See 28 U.S.C. § 1391(b); *Costlow*, 790 F.2d at 1488.

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8 of 8

II.

CONCLUSION AND ORDER

Accordingly, **IT IS HEREBY ORDERED** that the Clerk of the Court shall transfer this case for lack of proper venue, in the interests of justice and for the convenience of all parties, to the docket of the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 84(a), 28 U.S.C. § 1391(b) and 28 U.S.C. § 1406(a).<sup>1</sup>

DATED: 10/22/07

  
**THOMAS J. WHELAN**  
United States District Judge

<sup>1</sup> Because the Court finds transfer appropriate, it defers ruling on Plaintiff's Motion to Proceed IFP [Doc No. 2] and Motion for Appointment of Counsel [Doc. No. 3] to the Northern District, and expresses no opinion as to whether Plaintiff's Complaint alleges facts sufficient to survive the mandatory sua sponte screening provisions of 28 U.S.C. §§ 1915(e)(2) and 1915A(b). *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (28 U.S.C. § 1915(e) "not only permits but requires" the court to sua sponte dismiss an *in forma pauperis* complaint that fails to state a claim); *Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir. 2000) (sua sponte screening provisions of 28 U.S.C. § 1915A(b)(1) & (2) require court to dismiss complaints filed by prisoners which are frivolous, malicious, fail to state a claim or seeking damages from immune defendants). However, this Court does note that Plaintiff's Complaint appears to be duplicative of another action recently filed here but also transferred to the Northern District. *See Burton v. CDCR, et al.*, S.D. Cal. Civil Case No. 07-1803 W (RBB) (Sept. 19, 2007 Order Transferring Case [Doc. No. 2]), N.D. Cal. Case No. C 07-4967 PJH (PR).

3 of 8

FILED

2007 SEP 19 PM 3:59

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY do DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

KEVIN BURTON,  
CDCR # C-38062,

Plaintiff,

vs.

CALIFORNIA DEP'T OF CORRECTIONS  
AND REHABILITATION, et al.

Defendants.

Civil No. 07-1803 W (RBB)

**ORDER TRANSFERRING CIVIL  
ACTION FOR LACK OF PROPER  
VENUE TO THE NORTHERN  
DISTRICT OF CALIFORNIA  
PURSUANT TO 28 U.S.C. § 84(a),  
28 U.S.C. § 1391(b) AND  
28 U.S.C. § 1406(a)**

Kevin Burton ("Plaintiff"), currently detained at the San Diego County Jail in San Diego, California, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff claims that various California Department of Corrections and Rehabilitation ("CDCR") and Salinas Valley State Prison officials exposed him to cruel and unusual conditions of administrative confinement during January of 2005 in violation of the Eighth Amendment. (Compl. ¶¶ 26-50, 72-105.) Plaintiff also alleges pendent state law tort claims for intentional infliction of emotional distress, negligent infliction of emotional distress, and negligent training and supervision. (*Id.* ¶¶ 51-67.)

Plaintiff has not prepaid the \$350 civil filing fee mandated by 28 U.S.C. § 1914(a); nor has he filed a Motion to Proceed *In Forma Pauperis* pursuant to 28 U.S.C. § 1915(a).



VERIFICATION

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

(C.C.P. SEC. 446 & 2015.5; 28 U.S.C. SEC. 1746)

MC:38062

I, KEVIN BURTON

DECLARE UNDER THE PENALTY OF PERJURY

THAT: I AM THE Declarant/Prisoner IN THE ABOVE ENTITLED ACTION;  
I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS  
TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND  
BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 29 DAY OF MAY - 2008, AT R.J.D.  
STATE PRISON, 480 Alta Road, San Diego, CA 92179

(SIGNATURE)

Kevin Burton

(DECLARANT/PRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. SEC. 1013 (a) & 2015.5; 28 U.S.C. SEC. 1746)

I, \_\_\_\_\_, AM A RESIDENT OF R.J.D. STATE PRISON, IN THE COUNTY  
OF S.D. STATE OF CALIFORNIA; I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM I AM  
NOT A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. Box 799002  
Richard J. Donovan Correctional Facility San Diego, CA 92179

ON MAY 29, 2008, I SERVED THE FOREGOING:

OFFICE OF THE CLERK U.S. District Court Northern District of California  
450 GOLDEN GATE AV. SAN FRANCISCO, CA 94102  
(SET FORTH EXACT TITLE OF DOCUMENT(S) SERVED)

ON THE PARTY(S) HEREIN BY PLACING A TRUE COPY(S) THEREOF, ENCLOSED IN A SEALED ENVELOPE  
(S), WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO  
PROVIDED AT Richard J. Donovan Correctional Facility

Inquiry of Previously Submitted Documents, Letter,  
Order transferring action(s) to Northern District of California.

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS  
REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO  
ADDRESSED. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: MAY 29, 2008

Kevin Burton  
(DECLARANT/PRISONER)

Kevin Burtin  
R.J. Donovan  
San Diego  
2009

34102+3881-0004

OFFICE OF THE CLERK  
U.S. District Court  
Northern District of California

450 Golden Gate Ave  
San Francisco, CA 94102

R.J. DONOVAN  
DEPT OF  
CORRECTIONS  
& REHABILITATION



MAY 1  
US PO  
FIRST  
MAILED FROM:  
011A04130C